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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,643	01/28/2002	Anthony Nocella III	984	3850

7590

09/01/2005

Law Offices of John D. Gugliotta, P.E., Esq.  
202 Delaware Building  
137 South Main Street  
Akron, OH 44308

EXAMINER
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YIP, WINNIE S

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 09/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/058,643

Applicant(s)

NOCELLA, ANTHONY

Examiner

Winnie Yip

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 June 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 3-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This office action is in response to applicant's amendment filed on June 21, 2005, 2000.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Drawing Corrections/Objections***

1. The drawings correction filed June 21, 2005 are disapproved because they include a new matter which is not originally filed.. The new subject matter is: the proposed drawing Fig. 2 changes the batteries (12) being located on the lower end of the shaft and the end cap at the upper end of the handle section which are not supported by either the specification and the drawings as originally filed. According to the disclosure, page 5, lines 11-17, and the drawing Fig. 2 as originally filed, the batteries 12 “are stored within a cavity inside of the handle section (10), “a series of threads 14 are formed along the lower rim of the handle, and “a screw cap 16 with matching, receiving the threads 18 mate to the threads 14 to removably contain the batteries 12”. The proposed drawing Fig. 2 provides a new position of the barriers 12 and the cap 14 as different then Fig. 2 as originally filed. New matter must be cancelled.

2. The drawings filed January 28, 2002 stand objected to under 37

CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the feature of “an illumination means housed within said shaft” (claim 1) “the illumination means comprises and incandescent lamp” (claim 3) must be shown or the features canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR

1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action.

The objection to the drawings will not be held in abeyance.

***Amendment/Specification***

3. The amendment filed June 21, 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

“contains an battery assembly 10 within the shaft at the upper end of the handle assembly 6” and “as well as a plurality of batteries 12 which are stored within a cavity inside the shaft section 4” (page 5, lines 11-17). The new positions of the batteries and the cap are not supported by original disclosure including the specification and drawings.

Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and

shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1 and 3-7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regard to claims 1, 3 and 7, the phrase “illumination means housed within said shaft” (claims 1 and 7) and the phrase “an incandescent lamp located on the interior of said shaft” (claim 3) does not consist the body of the claimed invention. According to the specification, the illumination means appears to be housed at upper end of the handle and extending directs to the shaft, but is not housed in the shaft as amended. Clarification is required.

Regard to claim 5, the phrase “wherein said shaft holds and contains a battery assembly at said shaft lower end” does not deem consistent to the body of the claimed invention as previous defined. According to the specification, the battery assembly is contained on the handle section rather than at the shaft lower end.

Regard to claim 6, the features: the cavity, the series threads , a screw cap are not located on the shaft as now claimed, but rather on the handle section.

Further, in claim 7, line 7, it is unclear what is means by “a neon-colored tube”. Should it read “a neon-colored translucent tube?”

The claims are confusion of what are the structural limitations of the claimed invention. Appropriated correction is required.

#### ***Art Rejection***

6. Note that an art rejection has been withheld pending clarification and correction of the drawing and specification objection. None of the prior art of record appears to read on the invention as understood by the examiner and the subject matter of the claims appears to be allowable if the rejections under 35 U.S.C. 112 can be overcome. However, upon applicant's amendment to overcome the rejections and objections raised by the examiner and upon the examiner's better understanding of the invention, the application will be given full consideration on the merits of the claims upon such correction.

#### ***Response to Arguments***

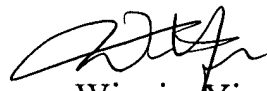
7. Applicant's response with respect to claims 1, 3-7 have been considered but are moot in view of the new grounds of rejection as set forth above.

***Inquiry Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 571-272-6870. The examiner can normally be reached on M-F (9:30-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Winnie Yip  
Primary Examiner  
Art Unit 3637

August 26, 2005



disapproved  
mg  
8/25/05

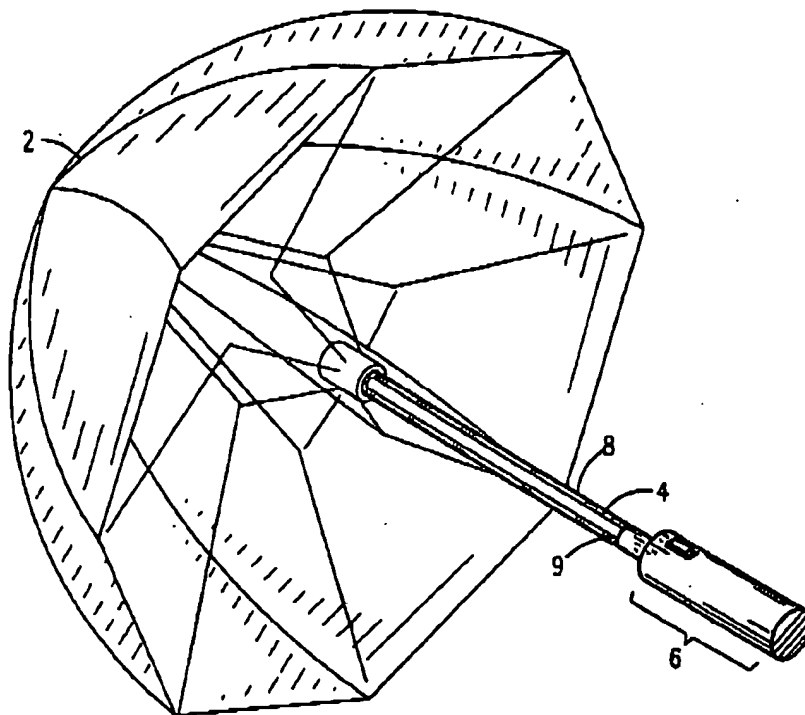


Fig. 1

disapproved  
w/ 8/25/05

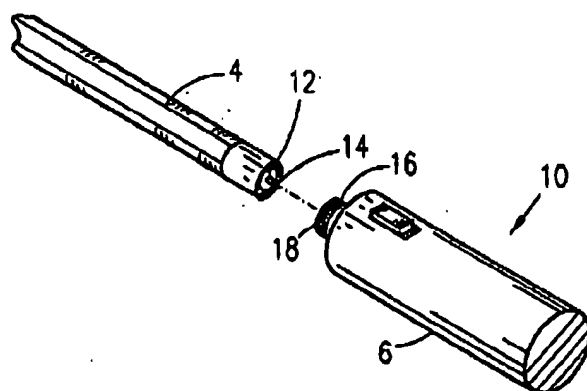


Fig. 2